

ABOUT GROWTH

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**WASHINGTON STATE
COMMUNITY, TRADE AND
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Building Foundations for the Future



Commission searches for land use treasures

By T. Ryan Durkan, Chair
Land Use Study Commission

It was a little over a year ago that Governor Lowry asked me to become the chair of the Land Use Study Commission. I have likened the last year, and the remaining 20 months, to a treasure hunt.

The Governor's Task Force on Regulatory Reform and the Legislature gave the commission a map and a description of the treasure. When we unfolded the map, though, we discovered that there were several sections missing, including the part of the map indicating the location of the treasure.

Over the last 12 months, the commission has filled in the missing pieces and has a more or less complete road map. We ran into a few bumps and washouts and have had to take some detours. The Governor asked the commission to look at issues concerning appeals to the growth management hearings boards and methods to provide greater certainty in the planning process.

We will be checking in at the midpoint of our journey in November when we make our second annual report. The article on pages 4 and 5 in this issue goes into more detail about the issues under consideration for recommendation. Once we pass that milestone, we will be ready for the final leg of our journey.

The commission was directed to develop an integrated land use code that combines both land use and environmental laws into a "single, manageable statute." That task has proven even more daunting than I anticipated. The benefits of an integrated land use code could be more efficient use of both public and



T. Ryan Durkan, Chair LUSC

private resources through elimination of duplicative requirements and processes. It could also better protect the state's environmental and natural resources than

does the current, fragmented process.

But there are risks, as well. It is inevitable that consolidation will require some balancing of interests and values. There is concern that balancing could change the level of protection of some resources. Unintended consequences are also a risk with any new legislation. Finally, cities and counties, straining under the changes wrought first by the GMA and then by regulatory reform, are not anxious to see another round of changes, particularly if they are costly or merely cosmetic.

The commission is driving into this uncharted area with caution. It has established a broad-based committee system to scout out the territory and come back with a recommended route. By the beginning of the year, we should have a clearer sense of where the road may lead and how to find the treasure at the end.

The commission's success will be dependent upon its success in answering the concerns of the public. We will be holding public meetings in October to receive comments on our draft report. I encourage you to attend those meetings or submit your comments in writing.

ABOUT GROWTH

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GMA is foundation for land use regulatory reform

By Steve Wells
 Assistant Director, Growth Management Services

The Growth Management Act provides the foundation for land use regulatory reform in Washington state. It offers the opportunity for local governments and citizens to better coordinate the many elements of the land use planning process.

Before the GMA, local land use regulations often lacked a focus and sometimes competed for attention. Now with GMA county-wide planning policies, comprehensive plans, and development regulations, land use regulations can be developed that fit with adopted policies on how development will occur.

For example, the GMA offers ways cities and counties can plan together for growth in unincorporated urban growth areas. A recent press conference in Olympia celebrated coordinated GMA planning with Thurston County's adoption of city development regulations for the UGAs surrounding the cities of Olympia, Lacey, and Tumwater. Reporters asked why it had taken so long for Thurston County and the cities to develop joint planning for the UGAs. The answer? Before the passage of the GMA the structural elements were not in place for

this type of coordinated planning. The GMA provides the needed foundation.

Another example is forest practices. For more than a decade, clarification has been needed of state and local roles in regulating land clearing or the conversion from natural resource lands to other uses. Whether this should continue to be a state regulatory issue is only now being resolved by the Timber, Fish, and Wildlife Group because the GMA elements of county-wide planning policies, comprehensive plans, and development regulations are now in place.

This newsletter focuses on the issues being discussed by the state Land Use Study Commission. The Legislature's challenge to the commission is to look at land use laws, including the GMA, to find ways to integrate environmental and planning laws while protecting the state's natural resources and providing for development.

The commission's work can add to the strong foundation that has already been established by the GMA. With the GMA we have made important progress in being able to deal with the many issues that face local communities as they look into the next millennium.



Participants in public meetings: The LUSC will continue to gather comments at three meetings in October. The meeting schedule appears on page 6.

Funding options being reviewed by commission

By Chris Parsons, Staff
LUSC Finance Advisory Committee

Regulatory reform is moving forward on the planning home-front as more jurisdictions apply early environmental analysis of their growth management actions. More than 30 jurisdictions are either in the planning or implementation stage of integrated planning.

The integration of early environmental review with growth management planning for subareas or other land use activities ensures that impacts to the built and natural environment are identified before project level permitting is approved.

Integrated environmental review creates the opportunity to identify ways to: 1) limit the harmful impacts of development; 2) identify land use applications which fit the future character and needs of the community; and 3) encourage the implementation of the community's comprehensive plan. An integrated plan will also identify appropriate uses and needed mitigation. This will lead to greater certainty for developers and the public.

Since most environmental review is now paid for by project applicants, changing the focus of environmental review to the planning stage will shift the cost of environmental review from the developer to the local government. The Land Use Study Commission is looking at ways to help local governments pay for this new obligation.

The Legislature requested the Land Use Study Commission to "evaluate funding mechanisms that will enable local governments to pay for and recover the costs of conducting integrated planning and environmental analysis." The commission expects to make its report to the Legislature on this issue in its November 1996 report.

The Finance Advisory Committee was established by the commission to evaluate and recommend funding methods for the integrated planning and environmental review process.

The committee made its initial report to the commission in August. The report included three elements:

1. Criteria to evaluate funding mechanisms.
2. A list of 25 funding mechanisms and an evaluation of their benefits and liabilities.
3. A final report with recommendations.

The committee made the following recommendations:

Grant Program

The state should maintain the Planning and Environmental Review Fund as a grant program for two more years. The committee recommended appropriating \$9 million to the PERF for the 1997-99 biennium. The committee is continuing to evaluate appropriate funding sources for the state grant program.

New funding mechanisms for local integrated planning

The Legislature should authorize additional funding methods that would enable GMA jurisdictions to generate the funds necessary to conduct integrated planning and environmental review. The menu of possible new funding sources is still under review.

Criteria for coordination and awarding of PERF grants

The criteria for awarding grants or loans from PERF should be revised to clarify the linkage between integrated planning and a more efficient permit review process. This linkage could include improved public involvement mechanisms, coordination with special purpose districts, consultation with agencies responsible for administering pooled planning funds, and mediation of planning disputes.

The commission has reviewed the advisory committee's initial report. The committee's final report will be submitted to the commission by the October 8 meeting.

For more information, contact Chris Parsons at (360) 664-8809, or e-mail at chrisp@cted.wa.gov.

Land Use Study Commission members

The Land Use Study Commission members represent broad land use interests. Members of the commission are listed below.

- Chair T. Ryan Durkan, attorney with the Seattle law firm of Hillis, Clark, Martin, and Peterson
- Phil Best, Kitsap County Commissioner
- Sheila Collins, Spokane activist
- Tom Campbell, Assistant Director of Policy and Programs for CTED
- Keith Dearborn, partner with the Seattle law firm of Bogle and Gates
- Kathy Dietrich, Vancouver architect
- Loren Dunn, environmental attorney with the Seattle law firm of Graham and James/Riddell Williams
- Mayor Ed Hansen, Everett
- John Herrick, member of the International Federation of Professional and Technical Engineers
- David Moseley, Ellensburg City Manager
- Kimberly Ordon, policy analyst for the Natural Resources Department of the Tulalip Tribes in Marysville
- David Roseberry, wheat farmer and President of the Washington Association of Wheat Growers
- Skip Burch, Assistant Secretary of the Washington State Department of Transportation
- Terry Husseman, Deputy Director of the Washington State Department of Ecology

Commission debates more ways to simplify land use laws

By Harry Reinert

Executive Director, Land Use Study Commission

The Land Use Study Commission devoted the first several months of its existence to developing an understanding of the issues and concerns of the many different interests in land use issues. The result of this process was a recognition by the commission that three basic areas deserved additional attention:

- Creating more certainty in growth management planning,
- Improving the dispute resolution process, and
- Addressing concerns about growth management in rural areas.

Short-Term Goals

The commission is breaking down its study issues into smaller, more manageable topics for research and discussion. The following topics are currently under review:

Local planning process

Public participation and notice

— Many comments were received during public meetings on how citizen input in comprehensive plan development can be more effectively recognized by elected officials. Although it will not eliminate challenges, an improved public participation process could reduce the number of challenges to comprehensive plan decisions.

Incentives — Many counties and cities have expended considerable energy in efforts to implement the GMA. The benefits have been slow in coming. Are there ways to make the benefits of planning more tangible and immediate?

Rural and agricultural lands — The GMA recognizes the importance

of agricultural and other natural resources and directs their conservation. The GMA also limits the types of growth in rural areas. Many rural residents believe the GMA may actually harm their communities. Farmers are concerned the effort to protect agriculture may actually kill it. Does the GMA limit the options available to counties to plan for their rural and agricultural areas?

Urban lands — A fundamental provision of the GMA is that the major commercial, industrial, and residential development should occur within urban areas. Some people are concerned that cities and counties are not planning for the densities that will allow them to meet the GMA population goals. If this is correct, what tools are available to assure that there is an adequate supply of housing and services?

Appeals and dispute resolution

Review standards — County and city comprehensive plans and development regulations are presumed valid upon adoption. However, they are subject to challenge before one of the three growth management hearings boards. Some local governments believe that the boards are not giving their local decisions enough deference and are substituting their judgment for that of the local officials. What deference should be given local governments? What if the disagreement is over the interpretation of the statute as opposed to the way the statute is applied?

Invalidity — The Governor's Task Force on Regulatory Reform recommended the growth management hearings boards be given new authority to determine that parts or all of a comprehensive plan or

development regulation are invalid. The Legislature gave the boards the authority to clarify the effect of a decision determining that a plan or regulation did not comply with the GMA. This new authority is seen by some as a tool to achieve enforcement of the GMA, a use not anticipated by the task force. Uncertainty also exists about the effect of an invalidity order on some types of projects.

Alternative dispute resolution

— The boards are encouraging parties who file cases to resolve disputes outside of the hearings' board process. Impediments to alternative dispute resolution have been noted. For example, mandatory time limits for issuing opinions has forced the boards to issue decisions in cases where the parties were not far from agreement. Concerns also have been expressed about who can or should participate in the dispute resolution process.

Certainty and transitions

Performance measures — The GMA is largely procedural in nature, although it does have a substantive element. This substantive element is vague, resulting in many of the disputes over interpretation of the GMA. If local governments had clearer guidelines to rely on in preparing comprehensive plans, they would have less uncertainty about whether local decisions complied with the GMA. One promising approach is the use of performance measures that describe the desired outcome, without prescribing the way to get there.

Transition rules — The commission heard a number of complaints about the hardship applying the GMA has had on individual property owners. Are there ways to address these individual cases without harming the underlying purposes of the GMA?

Long-Term Goals

Some issues will take more time to develop before the commission will be able to grapple with them.

Consolidated state land use code

The business and development communities are major supporters of this effort. They see a consolidated code bringing substantial procedural simplification to a complex process. They believe these changes could make the development process simpler, with no loss in substantive protections for the things people care about. The counties and cities see a new code as another change on top of all the other changes they have gone through in the last six years. They would like a period of stability. Citizen activists and environmental groups see the potential to reduce public input and environmental protections.

In developing the consolidated code, the commission will need to be aware of these points of view. My own vision is that it will be possible to balance these interests, but it will take effort to get there.

The major challenge will be in getting all sides to see that the change requires a new approach to dealing with regulation of environmental and land use issues, moving from process to substance as the way to protect the environment. We must also find new ways of developing that substance. The commission heard repeatedly the concern of many local communities that the GMA imposed one particular planning approach on the entire state. Whether or not this perception is accurate, it illustrates the importance of developing systems which recognize the differences in geography, climate, culture, and history in this state and allows for appropriate choices.

The commission has formed an advisory committee to explore this issue in more detail. These recommendations will be included in the

commission's final report due in November 1997.

Balancing state and local interests

A number of issues facing communities attempting to implement the GMA are a result of choices made when the GMA was originally adopted in 1990 and 1991. Perhaps the most significant decision made in 1990 and 1991 was the role the state would play in the planning process. The Legislature made the deliberate decision to avoid the "top down" planning system found in Oregon and some other states.

The GMA's approach to balancing state and local interests, the so called "bottom up" planning process, does not mean that anything goes. The GMA has a substantive element which is the expression of the state's interest in the way development occurs and its impact on the state's resources. This also recognizes that counties and cities are not isolated, but are interdependent.

Many of the concerns expressed by local governments about GMA

implementation have to do with getting the local-state balance right. As with state land use code development, a new perspective is needed. This might involve a clearer direction from the state about the issues it believes are most important, with much more flexibility allowed for other issues. If the state is able to develop performance measures in those areas of greatest state concern, it may be possible to allow local governments the flexibility they desire.

The commission will have a draft report available after its October 8 meeting. Three public meetings are scheduled in October (see the commission meeting schedule below). The commission hopes you will take the time to review its recommendations and provide comments.

Many commission documents are available for review and comment. The commission maintains a home page on the World Wide Web: <http://www.wa.gov/cted/landuse/landuse.html>.

Land Use Study Commission meeting schedule

Oct. 8	Yakima — Monthly commission meeting ESD 105, Yakima Conference Center 33 South Second Ave.	10 a.m.-4 p.m.
Oct. 22	Spokane — Public meeting Spokane City Council Chambers 808 W. Spokane Falls Boulevard	6-8 p.m.
Oct. 24	Videoconference, Seattle/Wenatchee/Mount Vernon — Public meeting Call for site addresses	6-8 p.m.
Oct. 29	Orchards (Vancouver) — Public meeting Vancouver Community Room 8600 N.E. 117th Ave.	6-8 p.m.
Nov. 12	Tacoma — Monthly commission meeting Attorney General's Training Center 1019 Pacific, Room 209	12:30-4:30 p.m.
Dec. 10	Seattle — Monthly commission meeting Puget Sound Regional Council 1011 Western Ave., 6th Floor, Board Room	12:30-4:30 p.m.

For details on meetings of the Land Use Study Commission, call Julie Knackstedt at 360-586-1274.



Land Use Study Commission members offer views on commission challenges

The 14-member Land Use Study Commission is in the process of finalizing its 1996 report. Below five commission members give their perspectives on what they would like to see the commission accomplish. Photos from recent commission meetings also are included.

The current land use process under the Growth Management Act and the other state land use laws is too complex, too cumbersome, and too costly.

It is important that we consolidate state land use laws to make them more manageable for the local governments who are asked to enforce and implement these laws and make them understandable, "user friendly," and affordable for our citizens who must comply with them.

Along with those changes must come the funding to implement land use laws and to provide all the infrastructure and capital facilities that a given community needs. And, we need to provide local elected officials with sufficient flexibility and local control so that they can determine what works best for their particular community and adapt their land use framework accordingly.



Commission members David Roseberry and David Moseley.

My vision of what is to come out of the commission is a land use planning process that is more predictable. That doesn't mean that citizen participation will become more limited because more planning is being done "at the front end." My hope is that I can be part of crafting a design that allows for citizen involvement from the visioning process to adoption of the comprehensive plan to site-specific plans. Citizens are a tremendous resource to their communities. We need to find ways to use their time well and productively.

I want to see improvements in the way development is regulated in the state. The development review process should assure the preservation and enhancement of the unique character of Washington's communities and natural resources. But it should also allow for faster permitting in areas where development is desirable and has been planned for. I would also like to see the commission address regional issues such as drinking water supply and air quality.



Commission members Terry Husseman and Sheila Collins.

My goal in serving on the Land Use Study Commission is to advocate for the following objectives:

- A strong and sustainable state economy
- Affordable housing
- Fewer and fairer laws
- A protected and vibrant natural environment

As Washington grows less dependent on resource based industries — such as fishing, farming, and forestry — and more dependent on high-technology industries, our major state resource will be an educated and skilled work force. This work force won't be drawn to, nor will it remain in, a state which doesn't offer clean air and water, extraordinary outdoor recreational opportunities, and some of the most beautiful landscapes in the United States. Without this work force, business and industry will locate elsewhere, our economy will stagnate, and our quality of life will erode. I believe that firm and responsible, but also fair, environmental protection isn't only important in itself, but that it's also simply good business.



Commission member Kimberly Ordon, left.

My goal is to draft a comprehensive land use code that would protect the natural environment and provide for economic and population growth. I also want the commission to assist in continuing to implement the GMA and fine tune the law to ensure the continuation of this important piece of legislation.

Q&A ABOUT GROWTH

Questions about growth and development come up often.

Here are some questions that CTED planners have addressed recently.

Q. What are the fastest-growing counties in Washington?

A. The five counties of Clark, Jefferson, Pend Oreille, San Juan, and Mason — in that order — have seen the highest growth rate over the last six years. However, in sheer numbers of people, other counties are growing rapidly also. For example, King grew by more than 121,000 people and Spokane by about 45,000.

Q. What information will be available from local progress reports that have been submitted to CTED this year?

A. Each year, local governments submit progress reports to CTED. In this year's reports, local governments are responding to questions about changes in their land use and financing practices. They are also providing information about industrial sites that are available for development. The results of these progress reports will be published by CTED this fall.

Q. How should subarea plans be used?

A. Local governments have discretion about how they use subarea plans. Cities and counties develop subarea plans as a way to supplement an existing comprehensive plan and provide a more detailed level of information, analysis, or policy guidance for a specific area or neighborhood. Under the GMA, each subarea plan must be consistent with the jurisdiction's adopted comprehensive plan. The initial adoption of a subarea plan does not count toward the general "once-a-year" limit on

the consideration of amendments for comprehensive plans.

Q. Of all the petitions that have been submitted to the growth management hearings boards, how many have resulted in at least part of a local comprehensive plan or development regulation being invalidated?

A. Approximately 400 petitions have been submitted to the boards. As of early September 1996, nine jurisdictions have had one or more parts of a plan or regulation invalidated.

Q. Is "sustainable economic development" part of growth management?

A. Encouraging sustainable development is consistent with managing growth. In fact, the need to provide for sustainable economic development was one of the reasons for adopting the Growth Management Act, according to the legislative findings in RCW 36.70A.010. Economic development "within the capacities of the state's natural resources, public services, and public facilities" is also a goal of the GMA. Some communities have now adopted comprehensive plans that refer to sustainable development.

EDITOR'S NOTE

As of this issue of *About Growth*, CTED will discontinue its page of summaries of cases from the growth management hearings board. We learned from our readers that much of the news was old news by the time our quarterly newsletter arrives.

Please contact the hearings boards at the following numbers for information on their cases: Central Puget Sound, 206-389-2625; Western Washington, 360-664-8966; and Eastern Washington, 509-454-7803. Information on board cases also is available from: Code Publishing, 206-527-6831; West Publishing CD-ROM, 612-687-7000; CDLaw 206-623-1688; or via modem, LAW BBS, 206-727-8312.

Major changes to shorelines rules underway

By Chris Parsons, CTED Planner

In 1995, the Legislature adopted a variety of laws that amended the Shoreline Management Act. ESHB 1724, in particular, requires the most significant changes since adoption of the act in 1971. The revisions will help integrate shoreline management and planning.

The state Department of Ecology is reworking its administrative codes to reflect these changes.

The three categories of rules and anticipated public hearing and rule adoption schedules are:

- Streamlining procedural rules (new WAC 173-26 part 1&2 and 173-27). Public hearings are completed and adoption of the rule is planned for September.
- Clarifying jurisdiction and definitions for wetlands, streams, and lakes (new WAC 173-22). Public hearings are expected in October with final adoption planned for December.
- Framing new guidelines and updating local shoreline master programs (new WAC 173-26). Public review is beginning and public hearings are expected in November with final adoption planned for December.

Under ESHB 1724, local governments are required to update their master programs within two years of the state Department of Ecology's final revisions to the master program guidelines. Ecology is considering adopting the guidelines as pilot rules. This approach gives Ecology the opportunity to test the effectiveness of the rule for a definite period of time prior to full-scale implementation. Ecology will complete a pilot rule plan by this fall.

Draft guidelines can be found on the World Wide Web: www.wa.gov/ecology/173-026.html. For further information, contact Peter Skowlund at psko461@ecy.wa.gov or call 360-407-6522.

World Wide Web comes to CTED

If you like to surf the Internet, you may want to check out the home page of the state's Department of Community, Trade and Economic Development. There you can access "Growth Management Services."

Several items are currently "on line," including: a report on GMA compliance; minimum guidelines for classifying natural resource lands and critical areas; procedural criteria for comprehensive plans and development regulations; the Growth Management Program's draft six-year vision and strategy; and news from the Land Use Study Commission.

Here is the Web site address for this information:

<http://www.wa.gov/cted/growth/>

Advisory committee recommends technical assistance program

The Land Use Study Commission was asked by the Legislature to examine ways in which professionals could help local governments in the permit review process. The commission established the Professional Certification Advisory Committee to assist in evaluating this issue and making a report to the Legislature.

The advisory committee concluded that a new certification or licensing program would not provide the benefits that the Legislature would expect from such a program. It concluded instead that a technical assistance program would provide the best means of helping local governments make better use of available professional expertise. A technical assistance program would allow local governments to tailor programs to their individual needs. It would also allow the sharing of information about successful programs from around the state. Access to professional expertise would also assist local governments faced with an influx of permit applications or with a project with complex issues that the jurisdiction's staff may not have the training to deal with.

The committee suggested a number of elements to be included in the technical assistance package: information clearinghouse; short course; technical assistance manuals; roster of interested profession-

als; development; "circuit rider" to help individual jurisdictions.

The advisory committee presented its report to the commission at the September 10 meeting. The commission will include recommendations on this issue in its November 1996 annual report.

Commission to continue regulatory reform work

The Land Use Study Commission was established by the Legislature in 1995 as part of regulatory reform legislation. Its creation was one of the recommendations of the Governor's Task Force on Regulatory Reform, which recommended changing the way the regulation is carried out.

The Legislature took the first step toward an integrated land use and environmental protection system when it enacted the Growth Management Act in 1990 and 1991. The second step, in 1995, was the integration of some aspects of the State Environmental Policy Act and the Shoreline Management Act into the GMA. Both SEPA and SMA remain separate statutes that play important roles in the way communities make decisions about growth. The commission has been given the task of constructing the next step.



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